

ORDINANCE NO. 2016-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, AMENDING THE ESCONDIDO MUNICIPAL CODE CHAPTER 33 (ZONING CODE) ARTICLE 57, TO EXPLICITLY PROHIBIT THE CULTIVATION AND DELIVERY OF MEDICAL CANNABIS (MARIJUANA), TO MAINTAIN THE PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF ESCONDIDO AND TO DELETE ESCONDIDO MUNICIPAL CODE CHAPTER 16F (MEDICAL MARIJUANA DISPENSARIES)

Planning Case No. AZ 15-0004

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That proper notices of a public hearing have been given and public hearings have been held before the Planning Commission and City Council on this issue.

SECTION 2. That the City Council has determined that this Municipal Code Amendment is exempt from the California Environmental Quality Act ("CEQA") in conformance with Section 15061(b)(3) "General Rule" and finds that no significant environmental impact will result from approving this code amendment.

SECTION 3. That upon consideration of the staff report; Planning Commission recommendation; Factors to be Considered, attached as Exhibit "A" to this Ordinance and incorporated by this reference; and all public testimony presented at the hearing held on this project, this City Council finds the Zoning Code Amendment to be

consistent with the General Plan and all applicable specific plans of the City of Escondido.

SECTION 4. That Escondido Municipal Code Chapter 33, Article 57 (Miscellaneous Use Restrictions), is amended as described in the attached Exhibit "B" to explicitly prohibit the cultivation and delivery of medical marijuana, and to maintain the prohibition of medical marijuana dispensaries in the City of Escondido.

SECTION 5. That Chapter 16F of the Escondido Municipal Code is deleted.

SECTION 6. SEPARABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 7 That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 8. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed, and published in the County and circulated in the City of Escondido.

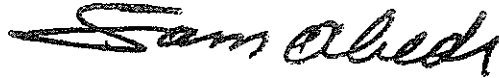
PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 3<sup>rd</sup> day of February, 2016 by the following vote to wit:

AYES : Councilmembers: DIAZ, GALLO, MASSON, MORASCO, ABED

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:



SAM ABED, Mayor of the  
City of Escondido, California

ATTEST:



DIANE HALVERSON, City Clerk of the  
City of Escondido, California

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STATE OF CALIFORNIA )  
COUNTY OF SAN DIEGO : ss.  
CITY OF ESCONDIDO )

I, DIANE HALVERSON, City Clerk of the City of Escondido, hereby certify that the foregoing ORDINANCE NO. 2016-01 passed at a regular meeting of the City Council of the City of Escondido held on the 3<sup>rd</sup> day of February, 2016, after having been read at the regular meeting of said City Council held on the 13<sup>th</sup> day of January, 2016.



DIANE HALVERSON, City Clerk of the  
City of Escondido, California

ORDINANCE NO. 2016-01

## EXHIBIT "A"

### FACTORS TO BE CONSIDERED AZ 15-0004

#### Municipal Code Amendment

1. The public health, safety and welfare would not be adversely affected by the proposed Zoning Code amendment. Pursuant to Article XI Section 7 of the California Constitution, a city may make and enforce within its limits all police, sanitary and other ordinances that are not in conflict with general laws. The proposed code amendment would explicitly prohibit the cultivation and delivery of medical marijuana, and maintain the prohibition of medical marijuana dispensaries in the City of Escondido as permitted by state law. No physical improvements are proposed as part of this code amendment.
2. Escondido's permissive zoning code, including its existing prohibition of medical marijuana land uses and businesses does not conflict with any State law. The proposed Zoning Code Amendment would not be detrimental to surrounding properties because the proposed amendments are merely a declaration of existing law and do not expand or reduce the type of land uses that may be established in the City.
3. The proposed amendment would be consistent with the General Plan, since permissive zoning systems like that operating in Escondido – with its resulting prohibition on marijuana related uses and medical marijuana land uses or businesses – have been upheld by the California courts, including in *City of Corona v. Naulls*, (2008) 166 Cal.App.4th 418; *City of Claremont v. Kruse*, (2009) 177 Cal.App.4th 1153; and *City of Monterey v. Carnnshimba*, (2013) 215 Cal.App.4th 1068. The proposed code amendment maintains the status quo and more importantly retains local control over the cultivation, distribution, and delivery of medical marijuana.

Exhibit B

Amendments to Escondido Zoning Code Sections 33-1100 and 33-1117  
*(Proposed language in italics)*

Chapter 33 ZONING

ARTICLE 57. MISCELLANEOUS USE RESTRICTIONS

**Sec. 33-1100. Purpose.**

(a) General miscellaneous uses covered in this article, are such that they cannot be confined to particular zones. In those zones where such land uses tend to adversely affect the principal use of the zone, the use is made subject to the issuance of a conditional use permit. One purpose of this article is to establish the criteria for the issuance of such conditional use permits and various regulatory provisions therefor. The other purpose of this article is to establish provisions for several land uses which create special problems of regulation and control. The provisions of this article are intended to minimize the adverse effect of those uses on surrounding properties in order to foster higher standards of development. When said adverse effects of any such conditional use on surrounding properties or the community as a whole cannot be prevented by the imposition of reasonable conditions, then the city may, and reserves the right to, deny such conditional use permit.

(b) The provisions of this article shall not be construed to limit or interfere with the installation, maintenance and operation of water lines, sewer lines, gas lines or other public utility pipelines and overhead electric and communication lines and associated appurtenances (exclusive of buildings) when installed, maintained and operated in accordance with all other applicable laws.

*(c) The Escondido Zoning Code has always been and is a permissive zoning code. Under a permissive code, no use may be established or operated within a building or on land unless the use: (1) qualifies as an expressly listed use pursuant to Chapter 33; and (2) has first received and maintained all permits or approvals needed to qualify as a lawful use.*

*(1) Only lawful uses may be legally established, operated, or maintained on land or in a building within the City of Escondido.*

*(2) It is unlawful, prohibited, and a violation of this code for a person to manage, operate, or materially contribute to a use which constitutes an unlawful use. 'Unlawful use' means any primary or accessory use which is not a lawful use."*

*(3) A person maintains and operates an unlawful use if the person: (1) is an owner or partial owner of the unlawful use; (2) holds an equity or other legal interest in the unlawful use which gives the holder managerial control in the operation of the unlawful use; or (3) is the a primary manager of the unlawful use, whether or*

*not on-site. A person operates or materially contributes to an unlawful use if the person: (1) is an on-site manager of the unlawful use during any period that the unlawful business is open; (2) is hired to provide or otherwise provides security at the unlawful use; or (3) is an employee at or worker in any way associated with the unlawful use. For purposes of this paragraph, an employee or worker is a person who provides on-site work or services for the benefit of the unlawful use (whether or not hired by the unlawful use as an employee) during a period when there are no more than two persons present at the site of the unlawful use (other than security) who are performing work for the benefit of the unlawful use.*

*(4) Enforcement against an unlawful use may occur using any or all available legal means, including without limitation, the issuance of administrative citations, civil proceedings, nuisance proceedings, or criminal proceedings.*

(d) The provisions of this article shall be in addition to any other applicable ordinance or regulation.

### **Sec. 33-1117. MEDICAL MARIJUANA**

(a) *Definitions*

(1) *"Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.*

(2) *"Commercial cannabis activity" means the cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in California Business & Professions Code Section 19319, related to qualifying patients and primary caregivers.*

- (3) *"Cooperative" shall mean two or more persons collectively or cooperatively cultivating, using, transporting, possessing, administering, delivering or making available medical marijuana, with or without compensation.*
- (4) *"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.*
- (5) *"Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license and that holds a valid local license or permit.*
- (6) *"Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under state or local law that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.*
- (7) *"Dispensary" means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.*
- (8) *"Distribution site" means any facility, structure or site used by any person to deliver, distribute, or access any medical cannabis product.*
- (9) *"Manufacturer" means a person who conducts the production, preparation, propagation, or compounding of manufactured medical cannabis or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license and that holds a valid local license or permit.*

- (10) *"Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.*
- (11) *"Medical Marijuana Regulation and Safety Act" or "MMRSA" shall mean the following bills signed into law on October 9, 2015 as the same may be amended from time to time: AB 243, AB 246, and SB 643.*
- (12) *"Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.*
- (13) *"Permit," "local license," or "local permit" means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.*
- (14) *"Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.*
- (15) *"Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to state or local law.*
- (16) *"Transporter" means a person issued a state license to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the state between facilities that also have a state and local license to conduct commercial cannabis activities.*
- (b) *Prohibitions.*
- (1) *Commercial cannabis activities are expressly prohibited in all zones and all specific plan areas in the City of Escondido.*
- (2) *Delivery of cannabis, mobile cannabis dispensaries, or engaging in any activity in furtherance of distribution, are expressly prohibited within the*



*City of Escondido. No person shall conduct any deliveries that either originate or terminate within the City.*

- (3) It shall be unlawful for any person to establish, own, allow, manage, conduct, or operate any commercial cannabis activity, including a dispensary or distribution site, or to participate as an employee, contractor, agent, or volunteer, or in any manner or capacity, in any commercial cannabis activity in the City of Escondido.*
- (4) All activities for which a State license is required pursuant to the MMRSA are prohibited in the City of Escondido and the City shall not issue any permit, license or other entitlement for any commercial cannabis activity for which a State license is required.*
- (5) Cultivation of cannabis for non-commercial purposes, including cultivation by a qualified patient or a primary caregiver, is expressly prohibited in all zones and all specific plan areas in the City of Escondido. It shall be unlawful for any person, including a qualified patient or primary caregiver, to cultivate any amount of cannabis in the City, even for medical purposes.*
- (6) Transport of medical cannabis or medical cannabis products by a state licensed transporter, authorized by state law, shall not be prohibited when travelling through the City of Escondido.*

*(c) Public Nuisance. Any use or condition caused, or permitted to exist, in violation of any provision of this Article shall be, and hereby is declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available to the City.*

*(d) Civil Penalties. In addition to any other enforcement permitted by this Chapter, the City Attorney may bring a civil action for injunctive relief and civil penalties pursuant to Chapter 1 of this code against any person or entity that violates this Chapter. In any civil action brought pursuant to this Chapter, a court of competent jurisdiction may award reasonable attorney's fees and costs to the prevailing party.*

*(e) Criminal Penalties. The violation of any provision of this Article is unlawful and is a misdemeanor, punishable by a fine of not more than one thousand dollars (\$1,000.00) or a jail term of six (6) months, or both. Each and every day on which a violation occurs shall be deemed to be a separate violation.*